

By Council Members Williams, Mark-Viverito, Mendez and Lander

A Local Law to amend the administrative code of the city of New York to prohibit bias-based profiling by law enforcement officers

Be it enacted by the Council as follows:

Section 1. Declaration of Legislative Intent and Findings. The City Council finds that bias-based policing endangers New York City's long tradition of serving as a welcoming place for people of all backgrounds. The Council further finds that the people of the City of New York are in great debt to the hard work and dedication of police officers in their daily duties. The name and reputation of these officers should not be tarnished by the actions of those who would commit discriminatory practices.

The City Council expresses deep concern about the impact of NYPD practices on various communities in New York City. In particular, the Council expresses concern about the NYPD's growing reliance on stop-and-frisk tactics and the impact of this practice on communities of color. In 2002, the NYPD made approximately 97,000 stops. By 2010, the number of stops had increased to more than 601,000. Black and Latino New Yorkers face the brunt of this practice and consistently represent more than 85 percent of people stopped despite representing just over 50 percent of the city's population. Moreover, stop-and-frisk practices have not increased public safety, as year-after-year nearly 90 percent of individuals stopped are neither arrested nor issued a summons.

Bias-based profiling by the police alienates communities from law enforcement, violates New Yorkers' rights and freedoms, and is a danger to public safety. By passing this legislation, it is the intent of the City Council to prohibit bias-based policing and to create a safer city for all New Yorkers.

§2. Section 14-151 of the administrative code of the city of New York is amended to read as follows:

a. Definitions. As used in this section, the following terms have the following meanings:

1. "[“Racial or ethnic] “Bias-based profiling” means [an act of] law enforcement action against an individual by a member of the force of the police department or

other law enforcement officer that relies, to any degree, on actual or perceived race, color, ethnicity, religion [or], national origin, age, sex, gender identity or expression, sexual orientation, immigration or citizenship status, language, disability (including HIV status), housing status, occupation, or socioeconomic status [as the determinative factor in initiating law enforcement action against an individual], rather than [an individual's behavior or other] on trustworthy information or circumstances, relevant to the locality and timeframe, that links a person or persons [of a particular race, ethnicity, religion national origin] to suspected unlawful activity.

2. "Law enforcement officer" means (i) a peace officer or police officer as defined in the Criminal Procedure Law who is employed by the city of New York; or (ii) a special patrolman appointed by the police commissioner pursuant to section 14-106 of the administrative code.

b. Prohibition. Every member of the police department or other law enforcement officer shall be prohibited from [racial or ethnic] engaging in bias-based profiling or unlawful discriminatory practices.

c. Enforcement.

1. An individual subject to bias-based profiling, or an organization whose interests are germane to the purpose of this section, may enforce this section in a civil action for any or all of the following remedies: compensatory and punitive damages; injunctive and declaratory relief; and such other relief as a court deems appropriate.

2. In an action brought under this section, relief may be obtained against

a. any governmental body that employed any law enforcement officer who engaged in bias-based profiling;

b. any law enforcement officer who engaged in bias-based profiling; and

c. any person with supervisory authority over such law enforcement officer.

3. An unlawful discriminatory practice is established under this section when

a. an individual or organization brings an action demonstrating that a law enforcement officer has, or law enforcement officers have,

intentionally engaged in bias-based profiling of one or more individuals; and

- i. the governmental body, law enforcement officer, or supervisor against whom such action is brought fails to prove that
 1. such bias-based profiling is necessary to achieve a compelling governmental interest, and
 2. the bias-based profiling was narrowly tailored to achieve that compelling governmental interest, and
 3. the least restrictive means were used to achieve the compelling governmental interest, or
 - b. An individual or organization brings an action demonstrating that the activities of law enforcement officers have had a disparate impact on individuals based on actual or perceived race, color, ethnicity, religion, national origin, age, sex, gender identity or expression, sexual orientation, immigration or citizenship status, language, disability (including HIV status), housing status, occupation, or socioeconomic status, and
 - i. the governmental body, law enforcement officer, or supervisor against whom such action is brought fails to prove a substantial justification for such activities, or
 - ii. the governmental body, law enforcement officer or supervisor does prove a substantial justification for such activities, and
 - iii. the individual or organization demonstrates a comparably effective alternative policy or practice which results in less of a disparate impact.
4. In any action or proceeding to enforce this section against any governmental body, the court may allow a prevailing plaintiff reasonable attorney's fees as part of the costs, and may include expert fees as part of the attorney's fees.

§3. Severability. If any provision of this bill or any other provision of this local law, or any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such holding shall not affect, impair or invalidate any portion of or the

remainder of this local law, and all other provisions thereof shall nevertheless be separately and fully effective and the application of any such provision to other persons or situations shall not be affected.

§4. This local law shall take effect ninety days after it is enacted.